

## **Exhibit “6”**

30(b)(6) Deposition of

**Wade A. Nielsen**

November 6, 2014

**Butler v. American Family**

No. 3:14-cv-05305 RBL



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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEFF BUTLER, individually and as  
the representative of all persons  
similarly situated,

Plaintiff,

No. 3:14-cv-05305 RBL

VS.

AMERICAN FAMILY MUTUAL INSURANCE  
COMPANY and AMERICAN STANDARD  
INSURANCE COMPANY OF WISCONSIN,  
foreign insurers,

Defendants.

30 (b) (6) DEPOSITION OF WADE A. NIELSEN

November 6, 2014

Seattle, Washington

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<p>1 APPEARANCES</p> <p>2 For the Plaintiff:</p> <p>3 Scott P. Nealey</p> <p>4 Nealey Law</p> <p>5 71 Stevenson Street</p> <p>6 Suite 400</p> <p>7 San Francisco, CA 94105</p> <p>8 415.231.5311</p> <p>9 415.231.5313 Fax</p> <p>10 snealey@nealeylaw.com</p> <p>11</p> <p>12 For the Defendants:</p> <p>13 John A. Bennett</p> <p>14 Bullivant Houser Bailey, P.C.</p> <p>15 888 SW Fifth Avenue</p> <p>16 Suite 300</p> <p>17 Portland, OR 97204</p> <p>18 503.499.4418</p> <p>19 503.295.0915 Fax</p> <p>20 john.bennett@bullivant.com</p> <p>21</p> <p>22 William G. Rasche</p> <p>23 American Family Insurance</p> <p>24 6000 American Parkway</p> <p>25 Madison, WI 53783</p> <p>608.249.2111</p> <p>866.614.8147 Fax</p> <p>wrasche@amfam.com</p>	<p>1 EXHIBIT INDEX (Continuing)</p> <p>2 EXHIBIT NO. DESCRIPTION PAGE NO.</p> <p>3 Exhibit No. 9 1-page confidential memo to 55</p> <p>4 Physical Damage Managers and</p> <p>5 Diminished Value Experts from</p> <p>6 Greg Werner, Auto Policy and</p> <p>7 Procedures Administrator.</p> <p>8 Bates stamp AMFAM_MM001715.</p> <p>9 Exhibit No. 10 31-page confidential American 62</p> <p>10 Family Insurance Certified</p> <p>11 Repair Program Shop</p> <p>12 Guidelines, February, 2014.</p> <p>13 Bates stamp AMFAM000001-031.</p> <p>14 Exhibit No. 11 11-page Diminution of Value. 73</p> <p>15 Bates stamp</p> <p>16 AMFAM_MM001726-1736.</p> <p>17 Exhibit No. 12 1-page letter to Brandon M. 73</p> <p>18 Feldman from Lisa McNally</p> <p>19 dated 7/30/10, Bates stamp</p> <p>20 AMFAM_MM000812.</p> <p>21 Exhibit No. 13 1-page letter to Christina 74</p> <p>22 Bower from Lisa McNally dated</p> <p>23 8/26/11. Bates stamp</p> <p>24 AMFAM_B000087.</p> <p>25 Exhibit No. 14 1-page letter to Bryce Meyer 79</p> <p>from American Family</p> <p>Insurance Group dated</p> <p>6/27/14. Bates stamp</p> <p>AMFAM_MM000766.</p>
<p>1 EXAMINATION INDEX</p> <p>2 EXAMINATION BY: PAGE NO.</p> <p>3 MR. NEALEY 5</p> <p>4 MR. BENNETT 80</p> <p>5 MR. NEALEY 81</p> <p>6</p> <p>7 EXHIBIT INDEX</p> <p>8 EXHIBIT NO. DESCRIPTION PAGE NO.</p> <p>9 Exhibit No. 1 4-page Amended Notice of FRCP 5</p> <p>10 30(b)(6) Deposition.</p> <p>11 Exhibit No. 2 25 pages, Family Car Policy. 15</p> <p>12 Bates No. POLICY_M000001-</p> <p>13 025.</p> <p>14 Exhibit No. 3 2-page Confidential Loss of 16</p> <p>15 Value. Bates No.</p> <p>16 AMFAM_MM002748-749.</p> <p>17 Exhibit No. 4 1-page Confidential 19</p> <p>18 Diminished Value Schedule.</p> <p>19 Bates No. AMFAM_MM002750.</p> <p>20 Exhibit No. 5 2-page Autosource Diminution 41</p> <p>21 of Value. Bates stamp</p> <p>22 AMFAM_M000587.</p> <p>23 Exhibit No. 6 14-page LexisNexis Moeller vs 44</p> <p>24 Farmers Insurance Company of</p> <p>25 Washington.</p> <p>Exhibit No. 7 10-page confidential 47</p> <p>Autosource Diminished Value</p> <p>Workflow Quick Reference</p> <p>Guide. Bates stamp</p> <p>AMFAM_MM001704-1713.</p> <p>Exhibit No. 8 3-page ISO Claim Search. 54</p> <p>Bates stamp</p> <p>AMFAM_M000589-591.</p>	<p>1 BE IT REMEMBERED that on Thursday,</p> <p>2 November 6, 2014, at 1700 Seventh Avenue, Suite 1810,</p> <p>3 Washington, at 12:00 p.m., before Eva P. Jankovits,</p> <p>4 Certified Court Reporter, appeared WADE A. NIELSEN,</p> <p>5 the witness herein;</p> <p>6 WHEREUPON, the following</p> <p>7 proceedings were had, to wit:</p> <p>8</p> <p>9 &lt;&lt;&lt;&lt;&lt;&lt; &gt;&gt;&gt;&gt;&gt;&gt;</p> <p>10</p> <p>11 (Exhibit No. 1 marked for</p> <p>12 identification.)</p> <p>13</p> <p>14 WADE A. NIELSEN, having been first duly sworn</p> <p>15 by the Certified Court</p> <p>16 Reporter, testified as follows:</p> <p>17</p> <p>18 EXAMINATION</p> <p>19 BY MR. NEALEY:</p> <p>20 Q Mr. Nielsen, we met a little bit before the</p> <p>21 deposition. And we've asked for you – for your</p> <p>22 deposition today. And I understand you're being</p> <p>23 presented as a 30(b)(6).</p> <p>24 A Correct.</p> <p>25 Q Okay. Which is a corporate representative.</p>

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Page 5

2 (Pages 2 to 5)



1 I have marked as Exhibit 1 a copy of the notice  
 2 to today's deposition. I've got an extra one if  
 3 somebody...  
 4 And do you understand that you're here to testify  
 5 on the topics that are listed within Exhibit 1?  
 6 **A I do.**  
 7 Q Okay. Now, I understand that you're in Phoenix.  
 8 What's your current title?  
 9 **A Casualty claim manager.**  
 10 Q And what's your territory that you're responsible  
 11 for?  
 12 **A The states of Washington and Oregon.**  
 13 Q Okay. And what is your role as casualty claim  
 14 manager for Washington and Oregon?  
 15 **A I supervise a team of adjusters that handle injury**  
 16 **claims under BIUM and UIMBI for those two states.**  
 17 Q Okay. Now, when you say UIM, do you supervise  
 18 adjusters for UIMPD as well?  
 19 **A No --**  
 20 Q No?  
 21 **A -- I do not.**  
 22 Q Okay. So you just do UIMBI?  
 23 **A Injury only, yeah.**  
 24 Q Injury only.  
 25 Have you supervised UIMPD claims in the state of

Page 6

1 Washington at any point?  
 2 **A I have.**  
 3 Q Okay. In what period of time was that?  
 4 **A As memory serves, about March of 2007 through January**  
 5 **of 2012.**  
 6 Q Now, obviously, the topics in this case involve  
 7 first-party property damage coverages and  
 8 specifically UIM.  
 9 Have you, other than your work at AmFam, have you  
 10 done anything to familiarize yourself with the topics  
 11 that are listed in Exhibit 1 that you'll testify on?  
 12 And I don't want any conversations you had with  
 13 counsel. You don't have to tell me the contents of  
 14 that, but just what have you done to familiarize  
 15 yourself?  
 16 **A With all of these topics --**  
 17 Q Mm-hm.  
 18 **A -- outside of AmFam?**  
 19 Q No. Let me back up.  
 20 You're here as a corporate representative, and I  
 21 understand you've handled UIMPD. My question is:  
 22 What have you done to familiarize and gather  
 23 information on any of these topics either within  
 24 AmFam or outside of AmFam?  
 25 **A Okay. I obviously had conversation with counsel.**

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1 I've had conversations with representatives in other  
 2 departments within American Family --  
 3 Q Okay.  
 4 **A -- our metrics areas, our policies ad procedures**  
 5 **area, and -- and other managers.**  
 6 Q Who, outside of counsel, have you talked to?  
 7 **A I've talked with the -- one of the physical damage**  
 8 **managers here in Washington, Bryce Hilden. I have**  
 9 **visited with Mark Follmann in our policies and**  
 10 **procedures area, and briefly with -- I believe his**  
 11 **name is Joe Boclare in our metrics area.**  
 12 Q What -- you were using the term "metrics."  
 13 Is that the computer analysis and data area?  
 14 **A For lack of a better term, yeah.**  
 15 Q Metrics is --  
 16 **A We call them the metrics people, but they're the --**  
 17 **they're the data miners.**  
 18 Q Okay. I assumed as much.  
 19 Now, how long have you worked at AmFam?  
 20 **A I've been with American Family for a little over**  
 21 **26 years.**  
 22 Q Congratulations. It's unusual in the insurance  
 23 industry to see somebody --  
 24 **A Thank you.**  
 25 Q -- that long.

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1 So can you just give me a brief synopsis of what  
 2 positions you've held?  
 3 **A When I started with the company in '88, I was a**  
 4 **claims adjuster transferred to Wichita, Kansas,**  
 5 **couple years later, was still an insurance adjuster.**  
 6 **I held a field position at that point handling**  
 7 **property, physical damage, casualty injuries,**  
 8 **everything, and became a casualty claim manager some**  
 9 **years later in Kansas. Then I accepted a position in**  
 10 **Phoenix a few years later as a physical damage claims**  
 11 **manager and held that position until I came to**  
 12 **Seattle in 2007 where I was a physical damage claim**  
 13 **manager supervising staff in Washington and Oregon,**  
 14 **and then became the branch claim manager, and now I'm**  
 15 **back in Phoenix.**  
 16 Q Okay. Do you have any specific training that you've  
 17 received in auto body repair?  
 18 **A Yes. I went to a training class a number of years**  
 19 **ago. I don't recall when. That was conducted at an**  
 20 **auto body repair facility. It was a two-week course**  
 21 **where you actually did hands-on body repair. In**  
 22 **fact, the car I was working on, I sectioned a quarter**  
 23 **panel, painted, the whole nine yards.**  
 24 Q Okay. Meaning that you cut it away with a torch and  
 25 then buffed it out and welded it back on --

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1 **A Correct.**  
 2 Q -- and painted it. Okay.  
 3 Was this taught through American Family or was  
 4 this an I-CAR course or -- or community college or --  
 5 **A It was a course developed by American Family, but I**  
 6 **believe it was -- I think it was a combination. It**  
 7 **was a collaboration with the auto repair, body repair**  
 8 **shop.**  
 9 Q Anything else that you've done on training or work  
 10 you've done in auto body other than that two-week  
 11 course?  
 12 **A I've taken a number of -- I was I-CAR certified.**  
 13 **I've taken the courses sufficient to get that**  
 14 **certification. I don't recall anything else, but...**  
 15 Q Were you I-CAR certified in paint or body work or  
 16 what areas?  
 17 **A Structural auto body repair. There was some refinish**  
 18 **involved. But the specific certification I guess I**  
 19 **don't recall.**  
 20 Q Okay. Now, looking at the -- Topic 1 -- I'm going to  
 21 try and go through this -- what -- what, if any,  
 22 information and disclosures does American Family  
 23 provide to first-party claimants in the state of  
 24 Washington as it relates to diminished value?  
 25 **A I'm not aware of any disclosures to first-party -- to**  
 Page 10

1 **our first-party policyholders with regard to**  
 2 **diminished value specifically.**  
 3 Q Okay. And that would be the case if there'd been no  
 4 disclosure from 2007 to the present?  
 5 **A Correct.**  
 6 Q And now, more generally, if somebody has a particular  
 7 benefit under the policy, that would be something  
 8 that would be potentially covered under the policy;  
 9 is that correct?  
 10 MR. BENNETT: Calls for a legal  
 11 conclusion.  
 12 **A "Benefit" meaning coverage --**  
 13 Q (By Mr. Nealey) Well --  
 14 **A -- that they have or --**  
 15 Q -- if you use the term "benefit," pertinent benefits  
 16 under the policy, what does that mean to you, the  
 17 benefits under a policy?  
 18 MR. BENNETT: Object to the extent  
 19 it asks for a legal conclusion.  
 20 **A To me, it means what coverages they have that would**  
 21 **be applicable to a given loss.**  
 22 Q (By Mr. Nealey) Okay. Well, let me ask a question.  
 23 If somebody has a loss under UIM, and the vehicle has  
 24 to be repaired, and it's undrivable and it is towed  
 25 to the repair shop, is the payment that you received  
 Page 11

1 for that towing expense, is that a benefit underneath  
 2 the policy?  
 3 MR. BENNETT: Object to the extent  
 4 it calls for a legal conclusion.  
 5 **A In some context it is because one of the coverages**  
 6 **under the policy is emergency road service that**  
 7 **provides coverage for that expense. Typically, if**  
 8 **it's associated with a loss, oftentimes that**  
 9 **particular expense is paid under that peril -- what**  
 10 **we call peril codes --**  
 11 Q (By Mr. Nealey) Okay.  
 12 **A -- or that coverage.**  
 13 Q And I understand. So -- so using an example, and  
 14 I'll just use Mr. Meyer's case as an example. His  
 15 2011 Mustang was obviously damaged in an accident,  
 16 and I believe it was undrivable, so it was towed to  
 17 the repair shop and they repaired it. And that  
 18 towing expense would then have been covered under his  
 19 collision coverage, and then when the claim was  
 20 turned into UIM, it would have been covered under his  
 21 UIM, right?  
 22 **A That would be correct, yeah.**  
 23 Q Now, but Mr. -- Mr. Meyer does not have a coverage  
 24 for towing expenses associated with UIM or a  
 25 collision loss, right?  
 Page 12

1 **A I don't know --**  
 2 Q Okay.  
 3 **A -- what coverages he has.**  
 4 Q Okay. But you don't have a specific coverage that's  
 5 a specific coverage that is designed to cover towing  
 6 expenses associated with a property damage loss.  
 7 That expense is covered under your comprehensive,  
 8 your collision, or your uninsured motorist coverage,  
 9 right?  
 10 **A Typically, yes.**  
 11 Q Okay. So, in this case then, the payment that you  
 12 would receive or reimbursement that you receive for  
 13 your towing expense, that doesn't come under a  
 14 specific coverage for towing. It's a payment that's  
 15 made under the generalized coverages UIM,  
 16 comprehensive, or collision, right?  
 17 **A A damage -- yeah, it would be a damage claim that**  
 18 **would be collectible under that coverage, yes.**  
 19 Q Okay. And is one of the benefits you get under the  
 20 policy the things that are paid, the damages that are  
 21 paid or reimbursed under the particular coverages?  
 22 MR. BENNETT: Object to the extent  
 23 it calls for a legal conclusion.  
 24 **A To me, benefits are more specific coverages. They're**  
 25 **not -- they're not individual items of damage that**  
 Page 13



1 you would get paid for under a claim, but if you want  
 2 to call them benefits, I guess that's fine.  
 3 Q (By Mr. Nealey) Okay. If somebody has a claim --  
 4 and I'll use Mr. Meyer as an example.  
 5 A Okay.  
 6 Q And Mr. Meyer, his vehicle is towed in to be repaired  
 7 and American Family determines that it is covered  
 8 under one of the first-party coverages and American  
 9 Family knows that the vehicle has been towed, does  
 10 American Family reach out to the insured and say  
 11 We'll cover the cost of towing or send us the bill  
 12 for the towing if you know that the insured has paid  
 13 it on their own?  
 14 A Yes.  
 15 Q Okay. So you would then disclose to an insured if  
 16 you knew that they paid that expense or they had done  
 17 it, you would disclose to them one of the things that  
 18 they receive under their comprehensive, collision, or  
 19 uninsured motorist is the towing expense to bring it  
 20 in?  
 21 MR. BENNETT: Object to form.  
 22 A We would. Typically, in most cases, we're the ones  
 23 actually arranging the tow for the first party, so  
 24 yeah.  
 25 Q (By Mr. Nealey) Okay. But if -- but -- and I

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1 understand that you disclose and say we're going to  
 2 do it, but if you have a situation where a customer  
 3 has -- for instance, the vehicle was damaged in an  
 4 accident, they had it towed to a repair shop, and by  
 5 the time American Family finds out that it's been  
 6 taken to a repair shop, your insured's already paid,  
 7 does American Family tell the insured, By the way, we  
 8 cover the cost of the towing to the repair shop, so  
 9 send us the bill?  
 10 A We do.  
 11 Q Okay. Now, similarly, I'm going to mark a copy of  
 12 the policy as Exhibit 2. This is the sample policy  
 13 that is Mr. Meyer's.  
 14 (Exhibit No. 2 marked for  
 15 identification.)  
 16 Q (By Mr. Nealey) And I have -- looking through  
 17 Mr. Meyer's policy, the definition in the  
 18 comprehensive and collision coverages... (Peruses  
 19 document.)  
 20 I'm sorry. I thought I knew where it was, but I  
 21 can't find it. Scratch that question.  
 22 Okay. Okay. Well, I can't find it. I'll leave  
 23 it out and get to it in a moment. Okay.  
 24 So when it comes to diminished value, if an  
 25 insured in the state of Washington is going to make a

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1 claim for diminished value under their UIM policy,  
 2 because there's no disclosure by American Family, the  
 3 insured would have to raise it with American Family  
 4 in the first instance?  
 5 MR. BENNETT: Object to form.  
 6 A They would have to present that claim to us, yes.  
 7 Q (By Mr. Nealey) Okay. So there are no circumstances  
 8 in the state of Washington from 2007 until the  
 9 present when American Family would have run an  
 10 assessment for diminished value or told an insured  
 11 about diminished value before the insured raised it  
 12 with American Family?  
 13 A Not that I'm aware of, no.  
 14 Q Now, once diminished value is raised by an insured,  
 15 from approximately 2010 forward, American Family has  
 16 used a tool by Audatex to determine what they believe  
 17 to be the diminished value; is that correct?  
 18 A Yes.  
 19 Q Okay. And I'm going to mark, as Exhibit 3, a copy of  
 20 a diminished value appraisal that was prepared and  
 21 was provided as an exemplar. It's Bates No. American  
 22 Family MM 2748 and 2749.  
 23 (Exhibit No. 3 marked for  
 24 identification.)  
 25 Q (By Mr. Nealey) Now, a couple questions about this

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1 form that is done.  
 2 If you look at the -- at the bottom, it says --  
 3 on here, it says, "NADA disclaimer." It says, "These  
 4 current NADA values are furnished under license from  
 5 NADASC." And then in the next page, if we continue  
 6 on Page 2, it says, "The values in the NADA guide  
 7 assume a vehicle in clean condition. Appropriate  
 8 deduction should be made to put a vehicle in salable  
 9 condition."  
 10 Is it your understanding that up until some  
 11 recent point anyway that the Audatex tool that  
 12 American Family would use to assess diminished value  
 13 was basing the base amount, the what they call total  
 14 condition adjusted market value, by using the NADA  
 15 retail clean values of vehicles?  
 16 MR. BENNETT: Object to the form of  
 17 the question.  
 18 A I couldn't say for sure that that's what --  
 19 exclusively what that total condition adjusted market  
 20 value is based on. I assume it plays some role in  
 21 the value or they wouldn't be putting the -- those  
 22 comments on it.  
 23 Q (By Mr. Nealey) Okay. Well, let me see if I can  
 24 break the question down to give as much information  
 25 as I can.

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1 You would agree with me that the Audatex, until  
 2 some point where they went to using their own  
 3 proprietary, that the diminished value assessment in  
 4 Audatex was based upon NADA values; is that correct?  
 5 **A We were using NADA evaluations to establish value**  
 6 **prior to changing tools.**  
 7 Q Okay. Meaning prior to using the Audatex --  
 8 **A AudaSource.**  
 9 Q AudaSource, okay.  
 10 **A Yes.**  
 11 Q So before using AudaSource, you were using NADA  
 12 guides to come up with a pre-loss value of cars for  
 13 diminished value assessments?  
 14 **A Correct.**  
 15 Q Okay. And then is it your understanding that when  
 16 you started using the Audatex diminished value guide,  
 17 or tool, which I've marked an exemplar of as  
 18 Exhibit 2, your understanding is that the Audatex  
 19 tool was using NADA guides as well as a starting  
 20 point for determining the pre-loss value of a  
 21 vehicle?  
 22 **A During the time frame prior to changing to**  
 23 **AudaSource.**  
 24 Q Okay. Do you have any independent knowledge about  
 25 whether the Audatex loss in value tool or, later on,

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1 it says diminished value tool, such as I used as  
 2 Exhibit 2, do you have any independent knowledge  
 3 whether that's based upon NADA guides other than  
 4 what's contained in this document -- and I've been  
 5 saying it wrong -- that I've marked as Exhibit 3?  
 6 **A I do not.**  
 7 Q Okay. Do you have any reason to doubt what Exhibit 3  
 8 says, which is that it's based upon NADA guides in  
 9 clean condition?  
 10 MR. BENNETT: Object to form.  
 11 **A I don't.**  
 12 Q (By Mr. Nealey) Okay. When you used NADA guides to  
 13 do diminished value before you had the tool -- I'm  
 14 going to mark as Exhibit 4 a document which we  
 15 received which is Bates 2750.  
 16 (Exhibit No. 4 marked for  
 17 identification.)  
 18 Q (By Mr. Nealey) Is this document connected to what  
 19 you were doing before you started using the Audatex  
 20 diminished value tool?  
 21 **A Yes, this is one of the things we used.**  
 22 Q Can you explain how this worked, Exhibit 4, what you  
 23 do under it?  
 24 **A It was essentially an Excel spreadsheet that**  
 25 **auto-calculated percentages of the ACV and the**

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1 **estimate amount as kind of a breakdown numbers-wise.**  
 2 Q Okay. So this appears to be a run with an ACV of  
 3 \$11,715 and then an estimate amount that's been put  
 4 in 3,921.36.  
 5 Can you tell me how -- how this tool would be  
 6 used with these values? Where'd you pull the number  
 7 off of this?  
 8 **A It would depend on a lot of factors when you look at**  
 9 **it. This, essentially, was one of the tools used to**  
 10 **kind of determine if diminished value was at question**  
 11 **in trying to determine how much that diminished value**  
 12 **would be in terms of dollars. This was a guide to go**  
 13 **by based on what was the extent of damage, what was**  
 14 **the type of damage, and what is the most appropriate**  
 15 **number based on all these factors, condition of the**  
 16 **car, those type of things.**  
 17 Q Let me see if I can break that down.  
 18 You said this would be one of the tools that  
 19 would be used to determine if diminished value was at  
 20 issue.  
 21 How would you use this -- I guess I can call it a  
 22 chart, that's contained in Exhibit 4, how would you  
 23 use that as a tool to determine if diminished value  
 24 was at issue?  
 25 **A It was a tool to essentially define or try and**

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1 **establish the dollar amount of what it was -- what**  
 2 **the diminished value for that particular vehicle was.**  
 3 **And this kind of just gave you breakdowns based on**  
 4 **percentages of -- at various dollar levels, and then,**  
 5 **based on all the rest of the information, which**  
 6 **number seemed appropriate in that particular case.**  
 7 Q Well, how would you use this? Well, first of all, we  
 8 have obviously a Xeroxed copy. It appears to me that  
 9 at some point, maybe on the original, that the boxes  
 10 for 10 percent were shaded in. Appear to be a little  
 11 darker. Is that a correct assessment on my part?  
 12 **A It kind of looks like it, yeah.**  
 13 Q Okay. So I'd just like you to run through how this  
 14 would be used and describe how this would be used to  
 15 determine if diminished value was at issue. We've  
 16 got the numbers at the top with an ACV and then an  
 17 amount of the estimate. So how would you use this to  
 18 determine if DV was an issue?  
 19 **A It varied depending on, again, the case and the**  
 20 **particular facts in that scenario. But we would use**  
 21 **up to -- you know, based on a percentage basis, you**  
 22 **would compare across the graph -- say, okay given the**  
 23 **circumstances with this particular vehicle and what**  
 24 **we're seeing and everything, is 5 percent of the ACV**  
 25 **appropriate in this case or is 5 percent of the**

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6 (Pages 18 to 21)



1 estimate or 10 percent of the estimate more  
 2 appropriate in this particular case?  
 3 Q Well, how would you decide how far down to go on the  
 4 chart? You've got numbers here from 1 to 40. How  
 5 would you decide whether you would use the numbers  
 6 off the repair estimate amount or off the ACV?  
 7 A Well, again, this was only one tool. We used  
 8 several. And kind of a comparison of this one to the  
 9 others that came up with a value, such as this loss  
 10 of value.  
 11 Q Was the Audatex system used, Exhibit 3? Was it used  
 12 at the same time as Exhibit 4 was used, or were these  
 13 used in different periods of time?  
 14 A I believe there was some overlap, but exactly how  
 15 much an overlap, I don't know.  
 16 Q Okay. Well, I understand how the Audatex tool,  
 17 Exhibit 3, works. I'm trying to figure out how  
 18 Exhibit 4 works, I mean, so I can give you a  
 19 hypothetical.  
 20 So we've got a car, using the numbers on  
 21 Exhibit 4, that -- that American Family determined  
 22 has an actual cash value of \$11,715. And I guess my  
 23 first question would be: That would be the NADA  
 24 value of the vehicle, right?  
 25 A Depending on the time frame when this was created, it

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1 could have been, yes.  
 2 Q Well, did you use a value that would be for ACV other  
 3 than NADA values?  
 4 A Years ago we did, yeah.  
 5 Q Well, let me just limit my question to 2007 forward.  
 6 A Okay.  
 7 Q Would you have been using NADA?  
 8 A Yes, until we used switched to AudaSource, yep.  
 9 Q So -- and would you -- would the ACV be based on an  
 10 NADA retail value?  
 11 A Yes.  
 12 Q And would that be based upon a retail -- a clean  
 13 retail?  
 14 A It would. That number would have already been  
 15 adjusted for any type of, you know, defects or  
 16 whatever, conditioning.  
 17 Q Okay. So, basically, the ACV would be determined  
 18 from 2007 until you started using the Audatex system  
 19 by using an NADA clean retail value which then you  
 20 adjusted to the extent it's necessary to adjust?  
 21 A Correct.  
 22 Q Now, so -- so I've got a vehicle there. You've got a  
 23 repair estimate, and the total of the repair estimate  
 24 is 3,921.36. What do you do from there?  
 25 A In some cases, this was used kind of to establish a

Page 23

1 range that if we -- if we went up to, like, 10  
 2 percent of the actual cash value of the vehicle, and  
 3 then we looked at, okay, what's 10 percent or  
 4 15 percent of the estimate, we've got a number from  
 5 here to here (indicating), and do we feel that, based  
 6 on the facts that we have in front of us, that the  
 7 diminished value for this case falls within that.  
 8 Q Okay.  
 9 A We would use other tools as well to help kind of dial  
 10 that in to figure out where -- what was a fair  
 11 number.  
 12 Q Well, so you gave me two numbers as examples. You  
 13 said 10 percent of the ACV and 15 percent of the  
 14 repair estimate. You actually gave a range.  
 15 But would those then be upper numbers and lower  
 16 numbers or what? You talk about a range. How were  
 17 those two numbers used?  
 18 A Well, I'm not exactly sure why this was built out to  
 19 40 percent, but I don't recall an instance where we  
 20 went beyond 10 percent of the ACV.  
 21 Q So would it be fair to say that from 2007 until when  
 22 you started using the Audatex system, which is also  
 23 based on 10 percent, the most that American Family  
 24 would pay diminished value would be 10 percent of the  
 25 ACV?

Page 24

1 A Not absolutely. Is it possible we would go more than  
 2 that? Maybe. Depends on the circumstances.  
 3 Q Would 10 percent of the ACV be sort of a starting  
 4 point then?  
 5 A Prior to using the tool, I wouldn't say it was a  
 6 starting point, no. It would be -- it would kind of  
 7 be a starting point to establish kind of the max we  
 8 would look at.  
 9 Q So -- so if I'm understanding, using this tool,  
 10 Exhibit 4, the spreadsheet, the sort of maximum you  
 11 would look at for diminished value on this car with  
 12 the parameters we've got on this sheet would be  
 13 \$1,171 because that was 10 percent of the NADA clean  
 14 retail value?  
 15 A Yeah. For the ACV calculation, yes, so that would be  
 16 the max.  
 17 Q Well, then how would American Family, prior to using  
 18 the Audatex tool, how would they determine whether  
 19 they paid that 10 percent maximum or they went down  
 20 from there? What factors would be considered?  
 21 A There's a number. I can almost be certain I can't  
 22 name them all right off the top of my head, but, I  
 23 mean, it'd be the type of damage -- was there any  
 24 structural damage involved? Are we dealing with a  
 25 very common vehicle in the market? Is the market

Page 25

7 (Pages 22 to 25)



1 saturated with those types of vehicles, therefore,  
 2 the impact would be less, or is it a very high demand  
 3 vehicle in the market? I mean, there's a number of  
 4 variables that would come into play.  
 5 Q So you would --  
 6 A Age of the car.  
 7 Q Okay. So you've listed type of damage, whether  
 8 there's structural damage, whether it's a common  
 9 vehicle, whether it's a high demand or the market's  
 10 saturated, and the age of the car.  
 11 Anything else?  
 12 A I'm sure there are, just not that's coming to mind at  
 13 the moment.  
 14 Q Well, when we look at age of the car, putting aside a  
 15 issue of a classic collectible car, was there sort of  
 16 an age of the car that you'd say there's not any  
 17 diminished value?  
 18 A Not specifically, no. The market and some experts in  
 19 the market, or who claim to be experts in the market,  
 20 would indicate seven years is the number, but that's  
 21 not always the case. It depends on the vehicle.  
 22 Q Do you have any reason -- do you have any information  
 23 as a representative for American Family that would  
 24 allow you to dispute that seven years is sort of a  
 25 cutoff for diminished value?

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1 MR. BENNETT: Object to the form of  
 2 the question. I don't think that's a topic.  
 3 A I wouldn't say it's an absolute cutoff, no.  
 4 Q (By Mr. Nealey) Okay. Meaning that there could be  
 5 cars older than seven years and still have diminished  
 6 value?  
 7 A Could be.  
 8 Q Now, was mileage on the car one of the factors that  
 9 you'd look at?  
 10 A Certainly.  
 11 Q Is there sort of a cutoff for mileage that you would  
 12 commonly apply?  
 13 A There's not a hard, fast cutoff, no, for us. Again,  
 14 it depends on the case.  
 15 Q Well, the Audatex tool, if you look at it, cuts off  
 16 at a hundred thousand miles.  
 17 A Yes.  
 18 Q Was American Family's practice, using the tools it  
 19 had like Exhibit 4 before they had the Audatex tool,  
 20 similar, that if you had over about 100,000 miles,  
 21 barring some really unusual set of facts, you would  
 22 say that there was no diminished value?  
 23 A I don't know that we'd say it was that number. It  
 24 was more based on did the vehicle have high mileage  
 25 for its age or low mileage for its age versus what

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1 the actual miles were was more the rule of thumb we  
 2 used.  
 3 Q Okay. How would you use that rule of thumb?  
 4 A Well, if you're dealing with, you know, a  
 5 ten-year-old car, and the calculations have changed  
 6 over the years, I think the running number now is  
 7 12,000 a year is average for a car. So if you're  
 8 dealing with a ten-year-old car, and it has  
 9 120,000 miles -- or let me -- let me do a better  
 10 example.  
 11 If you're dealing with a ten-year-old car and it  
 12 has 70,000 miles, that's low miles for the age of the  
 13 vehicle. So that's how we would look at it, and take  
 14 into consideration is it high miles or low miles for  
 15 that type of car for the age of the car.  
 16 Q So you might have a car that was ten years old but  
 17 had 70,000 miles, and so you might -- although  
 18 seven years is something you heard, you might still  
 19 consider the vehicle to have diminished value because  
 20 it's a low-mileage car?  
 21 A Potentially, yeah.  
 22 Q Now, you mentioned whether it's a common vehicle.  
 23 The fact that something's a common vehicle, would you  
 24 say that that means that it did not have diminished  
 25 value or it did? How would you use that factor?

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1 A I wouldn't say it would be a determining factor to  
 2 say whether it had diminished value or not. It may  
 3 have an impact on the amount.  
 4 Q Okay. Meaning that you might assign different  
 5 amounts of diminished value to actual amounts based  
 6 upon whether it was a common car or a non-common car?  
 7 A If there's a -- if there's a tremendous number of  
 8 that type of vehicle in the market, the impact of  
 9 diminished value would be less.  
 10 Q What do you base that on?  
 11 A Because there's plenty of cars out there exactly like  
 12 that or -- not exactly because you can never have two  
 13 cars exactly alike, but there's just a high number of  
 14 them.  
 15 Q Well, I mean, is that -- is that assumption that you  
 16 have less diminished value because it's a common car,  
 17 is it an assumption you have or do you have some data  
 18 or some kind of something that you or American Family  
 19 relied upon?  
 20 A There is no data on that basis, but typically what  
 21 you see in the market over the years is when there's  
 22 a huge number of vehicles that are the same model,  
 23 make, whatever, the market value of those vehicles,  
 24 unless they're in tremendously high demand, is not as  
 25 lucrative. You can get better deals and stuff

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8 (Pages 26 to 29)



1 because they need to move them. They have too many.  
 2 Q Well, so why would that mean that -- that there would  
 3 be less diminished value? I mean, I certainly  
 4 understand that the vehicle's pre-loss value might be  
 5 reduced because there's a lot of the vehicles, or  
 6 there's less demand for them, but why would that  
 7 affect diminished value?  
 8 A Well, I'm not saying it necessarily would. I'm just  
 9 saying it's something we'd look at. Supply and  
 10 demand has an impact to market value of vehicles.  
 11 Q Yes. And my question is: Do you have any reason to  
 12 believe -- or when I say "you," does American Family  
 13 have any reason to believe, when it was making these  
 14 calculations from 2007 until they started using the  
 15 tool in 2010, that the amount of diminished value as  
 16 a percentage of vehicle actual cash value would  
 17 change as a result of the vehicle being in high  
 18 demand or in low demand or common?  
 19 A It could. Like I said, it's one of a number of  
 20 factors.  
 21 Q The next factor you -- and let me just ask. I  
 22 understand something could, but are you aware of any  
 23 study or analysis or experts that were consulted, any  
 24 source of information for that assumption being true  
 25 or not true that American Family has?

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1 A I'm not aware of any, no.  
 2 Q Okay. Now, you mentioned have a vehicle have a  
 3 structural or frame damage.  
 4 How that does play a part?  
 5 A It's essentially because it's more of an invasive  
 6 repair, and there's more involved with the repair  
 7 when the damage gets to the structural components  
 8 which are usually part of the safety operation of a  
 9 unibody vehicle.  
 10 Q So how's that relevant to the existence of diminished  
 11 value?  
 12 A I guess it depends largely on your perspective of the  
 13 general public, populous. But some would argue that  
 14 if it's had structural damage, some believe on the  
 15 street, that that weighs more heavily towards the car  
 16 not being worth as much as it was before versus  
 17 simple cosmetic damage to the car that gets repaired  
 18 routinely throughout the life of the car. It has  
 19 nothing to do with the safety or the structural  
 20 integrity of the car. It's just appearance.  
 21 Q So would you -- would be it be American Family's  
 22 view, certainly, in assessing diminished value before  
 23 it started using the Audatex tool that, to the extent  
 24 that a vehicle had structural damage or frame damage,  
 25 that it was likely to have more diminished value on

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1 them?  
 2 A If it had structural damage, our position was that  
 3 diminished value might be possible, not that it would  
 4 have more or less and that it automatically got  
 5 diminished value, no.  
 6 Q And that's because whenever you have repaired a  
 7 safety system vehicle, even if a body shop does  
 8 appropriate repair, you don't really know how the  
 9 repair is going to hold up over use in a subsequent  
 10 accident?  
 11 A American Family doesn't know, no.  
 12 Q Yeah.  
 13 A But if they've done it correctly per manufacturer  
 14 guidelines, then it should last for the life of the  
 15 vehicle.  
 16 Q Although you've authorized the repair and paid for  
 17 the repair, you don't know how those repairs are  
 18 going to perform in a subsequent crash, and the only  
 19 way to find out would be to crash the vehicle again,  
 20 right?  
 21 MR. BENNETT: Object to form.  
 22 A Correct.  
 23 Q (By Mr. Nealey) And so part of the reason why people  
 24 will pay less or there might be -- put another way,  
 25 there might be diminished value on a vehicle with

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1 structural frame damages, because one does not know  
 2 how the vehicle is going to perform in a subsequent  
 3 crash, right?  
 4 MR. BENNETT: Object to form.  
 5 A There are some consumers out there that feel that  
 6 way, yes.  
 7 Q (By Mr. Nealey) Well, let me ask it about -- I know  
 8 it's outside the 30(b)(6) context. I'll just ask you  
 9 personally. If you have a car that has had major  
 10 damage onto its frame and structural systems, it's  
 11 had major safety components that have -- frame rails  
 12 that have been bent, sectioning that's taken place,  
 13 you know, major work so that the cost to repair the  
 14 vehicle is a very high percentage of the car's actual  
 15 cash value, and you have that car which has had major  
 16 repairs to its frame and structure and you've got the  
 17 same car that's never been in an accident, which of  
 18 them are you going to take?  
 19 A To be honest with you, I'd take the one that was  
 20 undamaged.  
 21 Q And that's because you don't know what might happen  
 22 with the one that's been damaged?  
 23 A Speaking personally, the number one reason why is  
 24 because I don't know who fixed the car. I don't know  
 25 what kind of work they did or what kind of job they

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1 did. If I had it repaired and I picked the shop,  
 2 then I wouldn't have a problem with the car.  
 3 Q And, of course, there's nobody buying the car in the  
 4 market that's likely to be able to find out who did  
 5 the repair work or what the repair work was or  
 6 exactly what was done. They're just generally going  
 7 to know the extensiveness of the damage, right?  
 8 A I'm not sure. I don't know what's disclosed if they  
 9 go to that level.  
 10 Q Do you -- do you have any -- do you have any  
 11 experience talking to people in the market for buying  
 12 and selling cars, meaning dealers and brokers of  
 13 cars, as to what kind of inspections or how they look  
 14 at cars to see if they've been wrecked and repaired  
 15 or not?  
 16 A I've had discussions with dealers over the years, not  
 17 in that depth to whether they do a 50-point whatever  
 18 whatever, I don't know.  
 19 Q But you do know that before dealers will purchase a  
 20 car or before they sell it, they do an inspection to  
 21 see if it's been in a wreck?  
 22 A I believe they do.  
 23 Q Now, you mentioned also the type of damage. I  
 24 understand structural damage.  
 25 If a car has major panels, body panels on a car

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1 that have been painted and repaired, how does that  
 2 play in the determination of whether DV might or  
 3 might not exist on a car? And just talking a period  
 4 from 2007 until you started using the Audatex.  
 5 A We would look at is the panel itself, for example, a  
 6 quarter panel on a sedan, is -- is a structural  
 7 component. It's part of the unibody structure system  
 8 on most cars, not all. So was there extensive damage  
 9 to that panel versus a fender, which is a bolt-on  
 10 panel, and doesn't really have any impact to the  
 11 structural safety of the vehicle? So we would look  
 12 at that, you know, what panel is it? How many panels  
 13 were there that had to be replaced? And, you know,  
 14 obviously, if you're getting into a roof -- well, if  
 15 you're getting into a roof, it's probably totaled  
 16 because you had to go through a lot to get to the  
 17 roof. But those types of things would come into play  
 18 in the analysis.  
 19 Q Okay. Is it fair to say that, putting aside the  
 20 issue of whether there -- whether diminished value  
 21 exists, how extensive the damage is, as we talked,  
 22 and whether you have frame or structural damage on  
 23 the vehicle is going to also impact, to the extent  
 24 that American Family decides there is diminished  
 25 value, the amount of diminished value?

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1 A If I heard your question correctly, does the extent  
 2 of damage impact what the potential diminished value  
 3 would be?  
 4 Q Yes.  
 5 A Yes.  
 6 Q And all things being equal, the more extensive the  
 7 damage is on the vehicle, vis-a-vis panels that have  
 8 to be painted or repaired, and the presence of frame  
 9 and structural, the more extensive either of those  
 10 are, the more actual diminished value you're likely  
 11 to see?  
 12 A Yes.  
 13 Q Now, I understand that it may just be entirely a  
 14 judgment model before you started using the Audatex  
 15 tool, but I'd like to see if I can get you to  
 16 describe, other than it just being a judgment model  
 17 and pulling a number out, exactly how this tool would  
 18 be used in other things in order to determine what  
 19 American Family believed to be a diminished value on  
 20 a car.  
 21 A What -- how we would get to the number?  
 22 Q Yeah.  
 23 A Again, it varied. I can recall cases where we would  
 24 use this tool. I remember instances where we'd use  
 25 the online Kelley Blue Book tool that would, once you

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1 plugged in the variables, and, again, almost every  
 2 piece of this is subjective. It all boils down to  
 3 critical thinking and applying the available  
 4 information. And in some cases we'd take three  
 5 different numbers and we'd average them and say,  
 6 Okay, if you take all three of these, not knowing  
 7 which one's the number, average them, and then you're  
 8 kind of dialling in on something that, you know...  
 9 Q And understanding that it was subjective, and maybe  
 10 you're pulling numbers from a couple different  
 11 places, did American Family, from 2007 until -- in  
 12 the state of Washington, from 2007 until the period  
 13 in 2010 when they started using the Audatex tool, did  
 14 American Family provide any training to its claims  
 15 adjusters on how to do these diminished value  
 16 calculations?  
 17 A There was no formal training done, no. It was done  
 18 by individual managers.  
 19 Q And was there a policy or procedure as to how  
 20 diminished value was supposed to be determined and,  
 21 if it was found to exist, calculated, that was in  
 22 writing in any of that period of time?  
 23 A No.  
 24 Q Now, when we look at the subjective numbers, you  
 25 mention the Kelley Blue Book tool. And if I

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10 (Pages 34 to 37)



1 understand what that is, in conditioning a vehicle in  
 2 Kelley Blue Book, Kelley Blue Book will change the  
 3 condition of the vehicle based upon factors including  
 4 prior damage -- scratch that -- based upon factors  
 5 including repair damage on the vehicle and how  
 6 extensive that is, correct?  
 7 **A I believe so. It's been quite some time since I've**  
 8 **used it.**  
 9 Q Okay. And so certainly in the period from 2007 until  
 10 you started using the Audatex tool, one of the things  
 11 that you do in the state of Washington would be to  
 12 use that conditioning tool and find out what had  
 13 changed in the condition of the vehicle and then use  
 14 the pre-loss value and then the post-loss value  
 15 taking into account the impact of that accident and  
 16 damage repair on the vehicle's condition?  
 17 **A I believe the Kelley Blue Book tool provided the**  
 18 **post-loss value.**  
 19 Q Yeah.  
 20 **A And then gave you the net.**  
 21 Q Yeah.  
 22 **A Yeah.**  
 23 Q Okay. Is that a Kelley Blue Book tool that was  
 24 just -- you got and used off the web, or was it  
 25 something you had to purchase from Kelley Blue Book?

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1 **A It was off the Internet. Web.**  
 2 Q Do you know if that's still on the web?  
 3 **A I would assume so, but I don't know. I haven't used**  
 4 **it for a number of years.**  
 5 Q And when you were valuing and using the Kelley Blue  
 6 Book tool, you would use the retail values of the  
 7 vehicle?  
 8 **A Yes, the value that we had --**  
 9 Q Yeah.  
 10 **A -- established, yes.**  
 11 Q Okay. And any time you're determining the actual  
 12 cash value, you're determining that actual cash value  
 13 as of the date of the actual loss, right?  
 14 **A That is correct.**  
 15 Q Now, when we talk about this period of time or later,  
 16 if somebody makes a diminished value claim and -- and  
 17 contends that there's a loss of vehicle, and you  
 18 determine that there in fact is a loss of value in  
 19 the vehicle as a result of the accident covered by  
 20 AmFam, if the person has a subsequent accident with  
 21 the vehicle, does that, in AmFam's opinion, make that  
 22 loss go away?  
 23 MR. BENNETT: Object to form.  
 24 Topic.  
 25 **A I guess which loss? Does it make which loss go away?**

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1 Q (By Mr. Nealey) Well, you determine the amount of  
 2 diminished value, if any, as of the time of the  
 3 accident, right?  
 4 **A Correct.**  
 5 Q Okay. So if we've got somebody who's an American  
 6 Family insured, and they had an accident say in 2013,  
 7 okay, and you've determined that they have a certain  
 8 amount of loss, the Audatex tool tells you a certain  
 9 amount of diminished value, and we'll just say it's a  
 10 thousand dollars.  
 11 **A Okay.**  
 12 Q If they then, after you determined at that point in  
 13 time, that their loss is \$1,000, if six months later  
 14 they have another accident, covered by American  
 15 Family or not covered by American Family, does that  
 16 subsequent accident, does it take away the earlier  
 17 loss of value?  
 18 MR. BENNETT: Object; calls for a  
 19 legal conclusion.  
 20 **A I'm not sure that it would take away the diminished**  
 21 **value from the first loss --**  
 22 Q (By Mr. Nealey) Yeah.  
 23 **A -- necessarily.**  
 24 Q Okay.  
 25 **A I suppose it could, but I don't know.**

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1 Q Okay. Could you think of a situation where you  
 2 would, in essence, determine, because of subsequent  
 3 events that happened, that there had not been a loss  
 4 as of the date of the accident?  
 5 **A Not that I can think of.**  
 6 MR. NEALEY: Okay. Now, I'm going  
 7 to mark another copy of this Audatex estimate, which  
 8 this one says AudaSource, which is the current name.  
 9 I'll mark that as Exhibit 5. And this is the one for  
 10 Mr. Meyer's vehicle.  
 11 (Exhibit No. 5 marked for  
 12 identification.)  
 13 Q (By Mr. Nealey) And -- and if we look here, this has  
 14 the same language on it, if you turn on Page 2 of  
 15 that, "These current NADA values..." "the values in  
 16 the NADA guide assume vehicle in clean condition."  
 17 I understand from other witnesses that, at some  
 18 point, AudaSource, for determining diminished value,  
 19 stopped using NADA and starting using a proprietary  
 20 system they have to come up with actual cash value.  
 21 Is that correct to your knowledge?  
 22 **A To be honest with you, I couldn't say.**  
 23 Q Okay. And so, obviously, you wouldn't know if there  
 24 was some date when they changed over?  
 25 **A I would not.**

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1 Q Now, Topic 2 and also Topic 10 in the notice, which  
 2 has been marked as Exhibit 1, asks about American  
 3 Family's position regarding the coverage of  
 4 diminished value under UIM in the state of  
 5 Washington. And I'd just like to know what American  
 6 Family's position is regarding the coverage for  
 7 diminished value under the UIM coverages in  
 8 Washington from 2007 forward.  
 9 MR. BENNETT: Object to the form as  
 10 it goes to his coverage.  
 11 **A Well, just -- I guess just to clarify, diminished**  
 12 **value is not a coverage under the policy.**  
 13 Q (By Mr. Nealey) What is it?  
 14 **A It's potentially a -- I guess I'll call it a**  
 15 **compensatory damage or loss that could exist as part**  
 16 **of a UIM claim.**  
 17 Q And under a policy, there's a question whether a  
 18 particular damage or loss is covered under the  
 19 policy, right?  
 20 **A In some cases, yes. I mean, there are certain things**  
 21 **that are excluded.**  
 22 Q Okay. Okay. And there's no exclusion in the UIM for  
 23 diminished value?  
 24 **A There isn't.**  
 25 Q Okay. And under the -- and what -- you said it's

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1 potentially compensable damage or loss.  
 2 What would be the circumstances if the loss  
 3 actual exists, the vehicle has a reduced market  
 4 value, that American Family would not find it to be  
 5 covered?  
 6 MR. BENNETT: In a UIM?  
 7 MR. NEALEY: In a UIM context.  
 8 **A Well, it's not really a matter of -- it's not that we**  
 9 **wouldn't find it to be covered.**  
 10 Q (By Mr. Nealey) Okay.  
 11 **A It's that we potentially might not find that**  
 12 **diminished value exists for that particular loss.**  
 13 Q So if I'm understanding UIM in Washington from 2007  
 14 forward, if -- just as a hypothetical, if somebody  
 15 comes in and they've got Nobel Prize winners in  
 16 economics, all of which put in a declaration saying  
 17 this car is worth \$2,000 less, the market value is  
 18 reduced by 2,000 the actual diminished value so that  
 19 nobody in American Family doubts that the car is  
 20 worth less, it has diminished value, you would find  
 21 that would be covered under the UIM coverage?  
 22 **A Correct.**  
 23 Q Okay. Are you aware personally -- scratch that.  
 24 You're a corporate designee, so I'll ask both the  
 25 company -- I guess the question is: Are you aware of

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1 a case, Moeller versus Farmers Insurance Company of  
 2 Washington?  
 3 **A I've heard of it, yes.**  
 4 MR. NEALEY: Okay. I'm going to  
 5 mark as Exhibit 6 a copy of the Moeller opinion.  
 6 (Exhibit No. 6 marked for  
 7 identification.)  
 8 Q (By Mr. Nealey) You've heard of it. I'm just  
 9 handing it to you.  
 10 Is Moeller something that you've ever read?  
 11 **A Not in detail, no.**  
 12 Q Okay.  
 13 **A I guess I shouldn't say I've ever "read" anything**  
 14 **about it.**  
 15 Q Okay.  
 16 **A It's been a conversation.**  
 17 Q Okay. What do -- what do you understand Moeller to  
 18 say?  
 19 **A Specifically, I couldn't say for sure. I believe it**  
 20 **had to do with diminished value and possibly even**  
 21 **talking about type of diminished value --**  
 22 Q Okay.  
 23 **A -- is my recollection. That's layman.**  
 24 Q Okay. So -- but before Moeller came out and after  
 25 Moeller came out, AmFam's policy in the state of

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1 Washington -- scratch that.  
 2 So from 2007 until Moeller came out in 2011, and  
 3 then forward after Moeller came out, American  
 4 Family's position in the state of Washington has been  
 5 that under its contract in the UIM coverages, if a  
 6 loss in market value is shown to exist on a vehicle,  
 7 that loss is covered under the UIM coverages?  
 8 **A If the loss -- if the diminished value is proven,**  
 9 **yes, it would be paid under UIM.**  
 10 Q And in every one of these cases where somebody's  
 11 raised the issue of diminished value, the discussion  
 12 that American Family has had with them is always the  
 13 question of whether an actual market value loss on  
 14 the vehicle exists or does not exist?  
 15 **A That would be the question.**  
 16 Q Okay. From 2010 until currently, is it correct that  
 17 the only tool that American Family has used to come  
 18 up with an actual number on diminished value is the  
 19 AudaSource diminished value tool?  
 20 **A I wouldn't say it's the only tool.**  
 21 Q Is there any other tool that's been used in the state  
 22 of Washington to your knowledge to come up with the  
 23 amount of diminished value other than the -- well,  
 24 scratch that.  
 25 The AudaSource diminished value tool is used both

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1 to determine if diminished value exists and then its  
 2 amount, right?  
 3 MR. BENNETT: Object to form.  
 4 **A I wouldn't say it's exclusively used to determine if**  
 5 **it exists. It's only when we feel that there is**  
 6 **potentially some diminished value would we use the**  
 7 **tool.**  
 8 Q (By Mr. Nealey) Okay. Okay. So the first thing it  
 9 has to do is that somebody within American Family has  
 10 to subjectively decide that they think that  
 11 diminished value exists on the vehicle, right?  
 12 **A Correct.**  
 13 Q Okay. And in making that determination whether  
 14 diminished value exists, does the person from  
 15 American Family -- do they look at the same sort of  
 16 criteria looked at in the AudaSource diminished value  
 17 tool to determine whether it exists?  
 18 **A Yeah. They would look at everything.**  
 19 Q Okay. Because under the -- under the AudaSource  
 20 diminished value tool, for example, if the vehicle  
 21 has over 100,000 miles, the AudaSource tool says  
 22 there's no diminished value?  
 23 **A Correct. And that may be the case, it may not be the**  
 24 **case.**  
 25 Q Okay. And, similarly, under the current damage

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1 modifier, if a vehicle has -- doesn't have sufficient  
 2 damage under the Audatex diminished value tool, it  
 3 shows zero diminished value, would you use the same  
 4 sorts of criteria found in the damage modifier?  
 5 **A We would look at the type of damage or the amount of**  
 6 **damage, not necessarily specific to what the tool**  
 7 **says, to determine whether we felt it did or did not**  
 8 **have any.**  
 9 Q Okay. And then, similarly, prior damage, the tool,  
 10 if you have a salvage title or a branded title, gives  
 11 you no diminished value, would that be the same  
 12 position that you would use subjectively looking at  
 13 whether diminished value might exist?  
 14 **A Potentially, but, again, it's not an absolute.**  
 15 MR. NEALEY: Okay. I'm going to  
 16 mark, as Exhibit 7, a copy of the AudaSource  
 17 Diminished Value Workflow Quick Reference Guide. And  
 18 this is Bates No. MM 1704 to 1713.  
 19 (Exhibit No. 7 marked for  
 20 identification.)  
 21 Q (By Mr. Nealey) And my first question is: This is a  
 22 2010 version. Are you aware of there being a more  
 23 up-to-date version than this?  
 24 **A Not that I'm aware of.**  
 25 Q So this is the same one you've looked at, 2010?

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1 **A Correct.**  
 2 Q And at the -- at the top, it says, "The normal  
 3 diminished value process would also include a repair  
 4 estimate and photos in addition to running diminished  
 5 value report."  
 6 Is that a fair summary of what's used by American  
 7 Family to make a determination if diminished value  
 8 exists and that it's a match, which is that you have  
 9 the repair estimate and you have photographs of the  
 10 vehicle and then you run the report?  
 11 **A Typically, yes.**  
 12 Q Okay. And there's no need to inspect the vehicle in  
 13 order to determine the amount of diminished value or  
 14 if diminished value exists?  
 15 **A There might be.**  
 16 Q What would be the circumstances where the statement  
 17 on Exhibit 7 about the normal process would not  
 18 apply?  
 19 **A I'm presuming that, where it's talking about the**  
 20 **process, would include a repair estimate in photos**  
 21 **would be the damage has not yet been repaired. In**  
 22 **some cases, we are supplied an estimate that the**  
 23 **vehicle owner's already obtained, and we may -- we**  
 24 **may evaluate and handle the claim off of that**  
 25 **estimate without an inspection. And potentially they**

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1 **supplied photos or the shop took photos. I mean, we**  
 2 **wouldn't necessarily always do that.**  
 3 Q Okay.  
 4 **A Sometimes it's provided to us.**  
 5 Q Okay. I understand. But my question is really:  
 6 What would be the circumstances in which -- when you  
 7 have the repair estimate and you have photographs of  
 8 the vehicle, and putting aside the issue that the  
 9 photos are from somebody else aren't good enough or  
 10 you don't believe the repair estimate, if you believe  
 11 the repair estimate is accurate, either American  
 12 Family's adjuster did it or -- or a DRP shop for  
 13 American Family did it or it came from a claimant and  
 14 you don't have a reason to doubt the accuracy of the  
 15 estimate, and the photos are adequate, are there any  
 16 circumstances where you would feel it necessary to  
 17 inspect the vehicle as part of the diminished value  
 18 process?  
 19 **A You're talking before the car's repaired?**  
 20 Q Yeah, before the car's repaired.  
 21 **A Prior to repair. Aside from having adequate**  
 22 **information provided to us, we would need to inspect**  
 23 **it to get that information.**  
 24 Q Okay.  
 25 **A In the majority of cases, that's what happens.**

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1 Q Okay. Well, I'm asking you to assume that you have a  
 2 repair estimate that you don't doubt the accuracy of  
 3 the repair estimate, and you got photographs, and you  
 4 don't doubt the -- the photographs are good enough  
 5 and you could see what the car looks like, is there  
 6 any circumstances that you would feel the need to  
 7 inspect the vehicle as part of determining the  
 8 existence or amount of diminished value?  
 9 **A We wouldn't be -- we wouldn't be talking about**  
 10 **diminished value if the vehicle had not been repaired**  
 11 **yet. I'm not sure we're on the same page.**  
 12 Q Okay.  
 13 **A That's why I asked. If you're talking about a repair**  
 14 **estimate and photos before the car is repaired, there**  
 15 **would be no diminished value at that point. It**  
 16 **hadn't been fixed yet.**  
 17 Q Okay. So once the car is fixed, whether it's fixed a  
 18 week later or two weeks later or a month later,  
 19 you're going to determine the diminished value loss  
 20 as of the date of the accident, right?  
 21 **A Correct.**  
 22 Q Okay. So what does fixing the car have to do with  
 23 it?  
 24 **A It hasn't been restored. It hasn't been put back to**  
 25 **preaccident condition yet.**

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1 Q Okay.  
 2 **A I'm not sure anyone could determine diminished value**  
 3 **on a car that's sitting there wrecked. It's**  
 4 **diminished value by the nature of the fact that it**  
 5 **has damage.**  
 6 Q So what you're saying is that when the car is -- has  
 7 been damaged and it's sitting there and it's damaged,  
 8 it has loss that comes from diminished value and loss  
 9 that comes from the fact that it's unrepaired at that  
 10 point?  
 11 MR. BENNETT: Object to the form.  
 12 **A I don't believe it has any diminished value at that**  
 13 **point. It has not been repaired.**  
 14 Q (By Mr. Nealey) Okay. So taking your answer then  
 15 after the car has been repaired, and the repairs are  
 16 done, and you have photographs of the car, and you  
 17 have the repair estimate, and you have the AudaSource  
 18 diminished value tool, what would be the circumstance  
 19 where you would feel it necessary to go beyond the  
 20 normal diminished value process and actually inspect  
 21 the car?  
 22 **A If somehow or if information was available that**  
 23 **indicated there was a question about the repair**  
 24 **itself, or a complaint by the owner of the car**  
 25 **regarding some of the repair work, an inspection**

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1 **would be appropriate. If there's nothing to indicate**  
 2 **there's any issue with the repair at all, an**  
 3 **inspection may not be necessary.**  
 4 Q Okay. So if -- put another way, if everybody says  
 5 that the repairs were properly done, done to industry  
 6 standards, and you have a repair estimate showing you  
 7 the extensiveness of the damage and the type of  
 8 repairs that were done, and you have photographs, and  
 9 you have the AudaSource diminished value tools been  
 10 run, then there would no need to look at the vehicle?  
 11 **A More than likely not.**  
 12 MR. BENNETT: Scott, whenever you  
 13 get -- just because I need to go to the bathroom.  
 14 MR. NEALEY: This is as good a time  
 15 as any.  
 16 MR. BENNETT: Okay.  
 17 (Recess 1:12 to 1:21 p.m.)  
 18 EXAMINATION (Continuing)  
 19 BY MR. NEALEY:  
 20 Q Now, looking at, just quickly, Topic 21, I want to  
 21 find out what you know about AudaSource. And -- and  
 22 what -- what do you know about the methodology that  
 23 supports the accuracy of the estimates of diminished  
 24 value that are produced by the AudaSource tool?  
 25 **A I don't have really any information or specifics on**

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1 **the methodology that they use for the tool.**  
 2 Q Okay. And so it's fair to say, obviously, American  
 3 Family buys the tool or rents the tool, I should say,  
 4 but American Family doesn't know what underlies the  
 5 estimates that are produced by it?  
 6 **A To my knowledge, no.**  
 7 Q Okay. And similarly then, American Family, although  
 8 they buy and use the AudaSource tool, they don't have  
 9 any information on the accuracy or the error rates  
 10 that are -- that are in the tool?  
 11 **A I'm not aware of any studies or any analysis done on**  
 12 **that.**  
 13 Q Okay. And you're unaware of anyone at American  
 14 Family ever looking at the accuracy of the AudaSource  
 15 tool to see if it's actually giving accurate or fair  
 16 or reasonable values as to the amount of diminished  
 17 value?  
 18 **A I don't know that we've looked at that at American**  
 19 **Family. We rely on the product that's being provided**  
 20 **to us.**  
 21 MR. NEALEY: Okay. Okay. I'm  
 22 going to mark, as Exhibit 8, a copy of an ISO claim  
 23 search report. This is the one for Bryce Meyer. I'm  
 24 sorry I don't have an extra copy for you.  
 25 ///

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<p>1 (Exhibit No. 8 marked for                  2 identification.)                  3 Q (By Mr. Nealey) This is Bates No. M 589 to 591. And                  4 whenever you do a diminished value assessment or have                  5 a diminished value claim, one of the things that                  6 American Family does is it runs a search in the                  7 insurance service office database to look for any                  8 prior accidents; is that correct?                  9 A Correct.                  10 Q Okay. And looking at this, that includes -- the ISO                  11 database includes information from the National                  12 Insurance Crime Bureau; is that correct?                  13 A Yes. I believe they're affiliated, yeah.                  14 Q Okay. And one of the things that comes up in the ISO                  15 search is any other repair estimates on that vehicle                  16 that insurers have provided; is that right?                  17 A Correct.                  18 Q Okay. So although Mr. Meyer is an American Family                  19 insured, the second match, for example, on Exhibit 8,                  20 is an estimate on the repair of damages from Allstate                  21 Insurance Company, right?                  22 A Correct.                  23 Q And then Match 4 is the estimate that was prepared by                  24 American Family on the vehicle, right?                  25 A Would appear so, yes.</p> <p style="text-align: right;">Page 54</p>	<p>1 A I believe that's correct, yes.                  2 Q Okay.                  3 A It came out, I think, in conjunction with the                  4 availability to that tool.                  5 Q Okay. And of course, in running the Audatex tool,                  6 the Audatex tool can be run whether the vehicle has                  7 been repaired or not repaired, right?                  8 A I'm not sure. I've never personally run one through                  9 the tool, but we wouldn't run the tool again until                  10 after the vehicle's repaired and diminished value has                  11 been requested.                  12 Q Understanding that, but if you have the final repair                  13 estimate on the vehicle, meaning any supplements have                  14 been done, you have the final repair estimate, you                  15 can actually physically run the tool, the Audatex                  16 tool, whether the car's been repaired or not, right?                  17 A You could, yeah.                  18 Q Okay. Going back a couple questions about the policy                  19 which has been marked as Exhibit 2, and we asked a                  20 couple questions on the notice about arbitration or                  21 appraisal. And my first question for you is, if you                  22 look at Page 24 if you look at the little numbers on                  23 the bottom -- let's see if I got the right page here.                  24 I'm sorry; it's Page 25. So last page of Exhibit 2,                  25 in reading this, the arbitration clause says the</p> <p style="text-align: right;">Page 56</p>
<p>1 Q Okay. So -- so when looking at diminished value,                  2 American Family has the capacity, if it wishes to, to                  3 run the VIN number of any of its insureds' vehicles                  4 and determine if an insurance company has reported a                  5 prior claim and ascertain the repair estimate on that                  6 car?                  7 A Correct.                  8 Q Do you know how many insurers participate in the --                  9 and put data into the ISO database?                  10 A I do not.                  11 (Exhibit No. 9 marked for                  12 identification.)                  13 Q (By Mr. Nealey) I'm going to give you Exhibit 9.                  14 This is a memo. It's dated [sic] MM 1715. I'm just                  15 wondering if you know when this was issued                  16 approximately?                  17 A (No response.)                  18 Q Have you seen this before?                  19 A I have, but I don't recall when it was -- when it was                  20 sent.                  21 Q Well, and it says, "To be consistent in determining                  22 the value, the diminished value tool and Audatex                  23 should be used."                  24 Would it be fair to say that this thing came out                  25 in 2010 or later?</p> <p style="text-align: right;">Page 55</p>	<p>1 matter may be arbitrated. And then 2b says, "The                  2 arbitration shall commence within a reasonable period                  3 of time after there is mutual consent of both                  4 parties."                  5 Does American Family interpret its arbitration                  6 clause in the Washington UIM policy to require mutual                  7 agreement to arbitrate?                  8 A That seems to be the way it's worded, so I would say                  9 yes.                  10 Q Okay. So meaning that both parties have to agree to                  11 an arbitration before one can take place under the                  12 American Family policy in Washington?                  13 A Yes.                  14 Q And this at the bottom says, END, and it's got an Ed                  15 date of 1/06. And does that mean that the UIM                  16 endorsement that we're referring to, which would be                  17 pages Bates No. 23 to 25 of Exhibit 2, that this has                  18 been in effect since January of 2006?                  19 A Correct.                  20 Q So for the entire proposed class period of 2007 until                  21 the present, this language found in the uninsured                  22 motorist endorsement in Exhibit 2 would have been in                  23 effect?                  24 A Correct.                  25 Q Now, second of all, if you go to Page 24, there is a</p> <p style="text-align: right;">Page 57</p>



<p>1 provision under C, "Insuring Agreement," that says 3.                  2 If -- it says, "If any suit is brought by you to                  3 determine liability or damages, the owner or operator                  4 of the uninsured motor vehicle must be made a                  5 defendant and you must notify us of the suit."                  6 My question is: If you look, obviously, at the                  7 first page, 23, there is a requirement that if                  8 there's no physical contact with the vehicle that you                  9 have to file a police report and then have some                  10 independent evidence.                  11 In a circumstance where you have either physical                  12 contact but -- a hit and run, so you have -- or you                  13 have a phantom driver, so you don't know who the                  14 uninsured motorist is, under C3, is it impossible for                  15 an insured to bring a claim against American Family?                  16 MR. BENNETT: Let me just object to                  17 form, beyond topic, but you can certainly answer.                  18 <b>A Can you repeat it?</b>                  19 Q (By Mr. Nealey) Okay. You have a situation where,                  20 under the UIM, you have either a phantom vehicle, but                  21 they've otherwise complied with the policy, a police                  22 report's been filed, they have some independent                  23 evidence to show a phantom vehicle, or you have a                  24 situation with physical contact, and then you have a                  25 hit and run. So, again, a police report would be</p> <p style="text-align: right;">Page 58</p>	<p>1 Q (By Mr. Nealey) Okay.                  2 <b>A That we need to be --</b>                  3 Q Okay. This is a provision that applies when you want                  4 to bring suit against the uninsured vehicle driver,                  5 this provision is here to make sure that American                  6 Family gets notice of the suit so they can either                  7 intervene or protect their rights?                  8 MR. BENNETT: Object to the form,                  9 beyond topic.                  10 <b>A That's my understanding.</b>                  11 Q (By Mr. Nealey) If we look at Topic No. 9 -- jump                  12 around a little bit here -- what -- what training are                  13 American Family adjusters and claims agents given in                  14 the state of Washington on the contents of the                  15 Washington Administrative Code provisions that                  16 address first-party insurance claims?                  17 <b>A There's no formal classes or anything of that nature.</b>                  18 <b>They're provided with our corporate claim guidelines</b>                  19 <b>which are in compliance with each of our operating</b>                  20 <b>states' regulations. We have reviewed in meeting</b>                  21 <b>sessions periodically, also in presentations with our</b>                  22 <b>in-house legal staff various Washington</b>                  23 <b>Administrative Codes and RCWs that were applicable to</b>                  24 <b>our claims handling.</b>                  25 Q If we go to Topic Nos. 11 and 12, is there any policy</p> <p style="text-align: right;">Page 60</p>
<p>1 filed if you have a hit and run.                  2 If you look at C3, it says, "If any suit is                  3 brought by you to determine liability and damages,                  4 the owner/operator of the insured motor vehicle must                  5 be made a defendant and you must notify us of the                  6 suit."                  7 How does that operate in a circumstance when you                  8 don't know who the owner/operator of the uninsured                  9 motor vehicle is?                  10 MR. BENNETT: Same objection.                  11 <b>A To be honest with you, I'm not sure.</b>                  12 Q (By Mr. Nealey) And I ask that question because this                  13 provision says "You must notify us of the suit."                  14 Does this provision apply in circumstances where                  15 an American Family insured has brought a claim                  16 against American Family under the policy as opposed                  17 to their trying to seek a determination without                  18 American Family in the courtroom?                  19 MR. BENNETT: Object; beyond                  20 topics.                  21 <b>A I'm not sure. I don't recall a situation such as you</b>                  22 <b>describe. This, to me, is talking about if you're</b>                  23 <b>filing suit against the underinsured -- the owner or</b>                  24 <b>operator of the underinsured motor vehicle, so it</b>                  25 <b>presumes that you know who that is.</b></p> <p style="text-align: right;">Page 59</p>	<p>1 or procedure within American Family to reinspect in                  2 the state of Washington auto physical damage claims                  3 to determine if the vehicles were in -- and this is                  4 exact language -- "pre-loss condition"? Was there                  5 any policy or procedure to do that from 2007 to the                  6 present?                  7 <b>A This presumes they were already repaired?</b>                  8 Q Yeah. After they've been repaired.                  9 <b>A There's no policy or procedure to do that with the</b>                  10 <b>exception of vehicles repaired through our certified</b>                  11 <b>repair program.</b>                  12 Q And whenever there is a reinspection for a certified                  13 repair program, is that reinspection to determine if                  14 the cars are restored to the pre-loss -- or                  15 preaccident condition, or is that to see if the                  16 estimating guidelines and the requirements of the DRP                  17 program have been followed?                  18 <b>A I would say primarily to ensure that they've followed</b>                  19 <b>the guidelines that we have in place, which includes</b>                  20 <b>repairing the vehicle correctly within industry</b>                  21 <b>standards, so I would say both.</b>                  22 Q Well, and I've got the guidelines. I'm happy to hand                  23 them to you. The guidelines require that the vehicle                  24 be restored. They don't mention anything about                  25 pre-loss condition, right?</p> <p style="text-align: right;">Page 61</p>



1 **A It's either pre-loss or preaccident or before the**  
 2 **loss to the condition it was before the loss.**  
 3 **Something to that effect.**  
 4 MR. NEALEY: I don't want to make  
 5 it a memory quiz.  
 6 I'll mark, as Exhibit 10, a copy of the DRP shop  
 7 guidelines. Here's the guidelines for February 2014.  
 8 I don't -- I don't have one for you. Got a  
 9 staple in it and thought there were two, but it's  
 10 really just one.  
 11 (Exhibit No. 10 marked for  
 12 identification.)  
 13 Q (By Mr. Nealey) I've gone through this pretty  
 14 carefully, and I might just direct you, to speed  
 15 things up, to Page 4, where it says, "We expect all  
 16 repairs you do for our customers will be done safely  
 17 and within industry standards."  
 18 And then it says, on Page 5 at the top, "CRP Shop  
 19 Expectations." Vehicles must be repaired following  
 20 original equipment manufacturer recommendations and  
 21 Interindustry Conference on auto collision repair  
 22 I-CAR standards.  
 23 I don't find anything in here that talks about  
 24 repairing cars to pre-loss condition. I'm happy to  
 25 have you correct me, but my question is: Is it a

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1 fair statement that the requirements of the DRP  
 2 program are that vehicles -- I'll use the language --  
 3 must be repaired following original equipment  
 4 manufacturer's recommendations and I-CAR standards?  
 5 **A It doesn't appear that they use the specific words**  
 6 **"pre-loss or preaccident condition." But if they do**  
 7 **the repairs as indicated in here, that's effectively**  
 8 **what they've done.**  
 9 Q What's the basis for the statement that you're making  
 10 that if people follow I-CAR standards that it's  
 11 effectively restoring to pre-loss condition?  
 12 **A That's what the I-CAR service bulletins, technical**  
 13 **bulletins, and those from the manufacturer are**  
 14 **designed to do.**  
 15 Q Do you know does I-CAR use the terminology that using  
 16 I-CAR procedures will restore a car to its pre-loss  
 17 condition? Does I-CAR say that?  
 18 **A I'm not sure that they do.**  
 19 Q Okay. And do the manufacturers say if you follow  
 20 their recommended procedures it will restore the car  
 21 to pre-loss condition?  
 22 **A I couldn't say what terminology they have.**  
 23 Q Okay. But it's fair to say there's certainly no  
 24 retirement in the DRP guidelines that American Family  
 25 does that requires DRP shops to restore to pre-loss

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1 condition?  
 2 **A Specifically using those words, no.**  
 3 Q And then on Topic 13, I'll kind of just ask it the  
 4 same which the topic does, Does American Family have  
 5 any information or knowledge if vehicles that are  
 6 less than six years old with less than 90,000 miles  
 7 and with over \$1,000 in body or paint damage can be  
 8 fully restored to their preaccident condition? And  
 9 that's a direct quote, "fully restored."  
 10 MR. BENNETT: Let me just object to  
 11 the extent that it calls for expert testimony.  
 12 **A Does American Family have any specific information**  
 13 **outside of the various resources available to us**  
 14 **within the industry? With rare exceptions that I**  
 15 **can't think of, every vehicle can be restored to**  
 16 **pre-loss condition if you follow the guidelines**  
 17 **outlined by the manufacturer.**  
 18 Q (By Mr. Nealey) Okay. My question's a little more  
 19 specific. What -- what information does American  
 20 Family have, like, you know, actual information, you  
 21 know, studies, documents, analysis, that's within  
 22 American Family's -- in American Family, not somebody  
 23 you could go out and hire, but actual information  
 24 within American Family that vehicles that are less  
 25 than six years old, have less than 90,000 miles, and

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1 that have over \$1,000 in paint or body or frame and  
 2 structural damage can be fully restored to their  
 3 pre-loss condition?  
 4 **A American Family has not done any studies or analyses**  
 5 **to that -- to that specific of a nature.**  
 6 Q Okay. Have any -- has American Family done any  
 7 studies that address the ability of repairing a  
 8 vehicle with body paint or frame or structural damage  
 9 fully to pre-loss condition?  
 10 **A None that I'm aware of. We rely on, obviously,**  
 11 **industry for that type of information.**  
 12 Q Okay. Topic 15, we're on to metrics.  
 13 **A Okay.**  
 14 Q I'll see if I can get through this pretty quickly.  
 15 I take it that American Family can, in generating  
 16 a list of uninsured motorist claims in the state of  
 17 Washington from 2007 to the present, can determine on  
 18 those claims the particular deductible that was  
 19 applicable to the loss, right?  
 20 **A We can generate a list of claims under the UIM**  
 21 **coverage for that time period. Simply looking at**  
 22 **that list, we cannot tell what the deductible amount**  
 23 **was. We'd have to look at each claim individually.**  
 24 Q You know how much was paid on the claimant, right?  
 25 **A Correct.**

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1 Q And your coverage -- you have a coverage database,  
 2 and the coverage database tells you what the  
 3 deductible is for each policy, right?  
 4 **A It's written into the policy language, yes.**  
 5 Q Absolutely. And so you can actually go to a -- as  
 6 American Family, if you have a claim, you can go look  
 7 in your coverage database and you'll see that, for  
 8 instance, Bryce Meyer has a policy, and his policy  
 9 has a \$100 deductible for UIM, right?  
 10 MR. BENNETT: Object.  
 11 **A No.**  
 12 Q (By Mr. Nealey) No?  
 13 **A The deductible amount is determined by the facts of**  
 14 **the loss. It's either \$100 if the underinsured**  
 15 **motorist is known or \$300 if they are unknown. The**  
 16 **facts of the loss would dictate that.**  
 17 Q (By Mr. Nealey) Oh, but it's written someplace in  
 18 the --  
 19 **A It's in the policy language.**  
 20 Q Okay. I know that. But you have an estimate of the  
 21 loss. And the estimate -- say the repair estimate on  
 22 a car might be \$2,000. You know whether -- with a  
 23 repair estimate of \$2,000, you know the amount on the  
 24 repair estimate, right?  
 25 **A Correct.**

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1 Q And you know at the same time the amount that is  
 2 actually paid by American Family, right?  
 3 **A Correct.**  
 4 Q And so if you put those two together, you know what  
 5 the deductible was that was charged?  
 6 **A Correct.**  
 7 Q Okay. So you can directly tell the amount of the  
 8 repair estimate without even having to look at what  
 9 the deductible is, right?  
 10 **A The estimate should reflect the appropriate**  
 11 **deductible that was taken.**  
 12 Q Okay. I understand that. So that the record is  
 13 clear, you have two ways of determining -- you can  
 14 directly determine what the actual repair estimate  
 15 was by just looking at the repair estimate, right?  
 16 **A Mm-hm.**  
 17 Q Okay.  
 18 **A Yes.**  
 19 Q And then you can determine the amount of the  
 20 deductible by taking the amount of the repair  
 21 estimate and then looking at the amount that American  
 22 Family actually paid, and whatever the difference of  
 23 the two would be the deductible?  
 24 **A Correct.**  
 25 Q Okay. And of course on each of those UIM claims,

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1 you're going to know the name and address of the  
 2 insured, right?  
 3 **A Correct.**  
 4 Q Okay. And you have the capacity to update those  
 5 records to whatever the most current address you have  
 6 for the insured, right?  
 7 **A Presuming they are still insured with us, yes.**  
 8 Q Absolutely. Through the last date of insurance, the  
 9 last contact you had with the insured, you would be  
 10 able to pull that most recent address?  
 11 **A Yes.**  
 12 Q Okay.  
 13 MR. BENNETT: Scott, may I just --  
 14 this isn't in the line of an objection so much as a  
 15 clarification. Your question here is can we just run  
 16 a deductible for you?  
 17 MR. NEALEY: Yeah.  
 18 MR. BENNETT: His answer is no.  
 19 MR. NEALEY: Yeah. Yeah. Let  
 20 me -- this is an example where his answer is exactly  
 21 what's needed. It's better -- his answer's better  
 22 than the question, the way it was written. We're on  
 23 the same page.  
 24 Q (By Mr. Nealey) So can you tell from your computer  
 25 databases whether a vehicle that is the subject of

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1 the claim is owned by the insured or leased by the  
 2 insured?  
 3 **A Possibly.**  
 4 Q Possibly.  
 5 **A I don't -- just in running a list of claims, no. If**  
 6 **we can run a list that would show a lienholder or an**  
 7 **other insured -- other named insured would usually be**  
 8 **the leasing company, then yes.**  
 9 Q So you have to cross -- you have to -- you have to  
 10 cross-reference the list of claims with the -- with  
 11 the field of whether there's another insured or a --  
 12 or a lessor in the insured database?  
 13 **A Correct.**  
 14 Q Okay. Now, if you have a person who makes a claim  
 15 under the UIM coverage, but they are driving a  
 16 nonowned vehicle, for instance, they're driving a  
 17 rental car, do you have a way in your system of  
 18 telling that the claim is made on a rental car or a  
 19 nonowned vehicle?  
 20 **A Yes, you can tell by looking at the claim because the**  
 21 **rental car company would be listed as a party to the**  
 22 **claim because they're the ones that would have the**  
 23 **damage claim.**  
 24 Q Okay. So to use a hypothetical, assuming I'm an  
 25 American Family insured, I get in an UIM accident,

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1 somebody else is at fault and I'm driving a car from  
2 Hertz, if you look at the claims database, you'd  
3 have -- Hertz would be listed in there, and you'd  
4 know because there's information on another owner of  
5 the vehicle that was a nonowned vehicle?  
6 **A Correct.**  
7 Q And I take it that you know from your claims database  
8 whether the claim was -- the vehicle was declared to  
9 be a total loss?  
10 **A Correct.**  
11 Q Okay. And do you have a field in your claims  
12 database when you can determine if a claim is glass  
13 only?  
14 **A It's not a field. Glass-only claims are paid under a**  
15 **completely different code.**  
16 Q Okay. So you have a code for glass only?  
17 **A Correct.**  
18 Q And is there a way in your claims system with the  
19 estimates to run and determine whether particular  
20 parts or items were repaired or replaced?  
21 **A Not within our claims system, but within Audatex**  
22 **database, yes.**  
23 Q Okay. So you could, for instance, run a list and  
24 find out if there were structural members that were  
25 replaced or framework that was done?

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1 **A Correct.**  
2 Q And, similarly, can you determine on an estimate  
3 whether there has been a body or paint repair? Can  
4 that be run in the Audatex system?  
5 **A Correct.**  
6 Q And I take it that the way that you would determine  
7 if a vehicle has a prior accident would be by running  
8 that vehicle in the ISO system?  
9 **A Correct.**  
10 Q And so you could, for instance, on a list, flag those  
11 claims on a list of UIM claims that had hits for  
12 prior accidents in the ISO system if you wanted to?  
13 **A We could. We'd have to look at each claim**  
14 **individually.**  
15 Q Okay. The ISO system, you plug in my individual VIN  
16 number?  
17 **A Yes, but it's not -- it's not captured in a**  
18 **searchable field within our claims system.**  
19 Q Well, if you -- if you had a list of VIN numbers that  
20 fell within a particular group of UIMs, you could  
21 just match run those VIN numbers --  
22 **A We could.**  
23 Q -- for hits? Okay.  
24 Topic No. 22, who is -- who is your total --  
25 scratch that.

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1 Who is your current contact person for AmFam at  
2 AudaExplore for the diminished value tool? Do you  
3 know who that is?  
4 **A At AudaExplore?**  
5 Q Yeah.  
6 **A I do not.**  
7 Q You do not.  
8 Who's the person who's -- from AmFam who's  
9 responsible for interacting with Audatex for the  
10 diminished value tool?  
11 **A Mark Follmann.**  
12 Q And this asks for the total number of assessments  
13 received and information prepared.  
14 Do you have an estimate of the number of  
15 diminished value assessments in the state of  
16 Washington that have been run?  
17 **A I believe the number was 280-some maybe.**  
18 MR. BENNETT: 244.  
19 **A 244.**  
20 MR. NEALEY: Counsel's always good  
21 for these things.  
22 Q (By Mr. Nealey) So 244, which I think is -- 244.  
23 And that would have been since approximately 2010?  
24 **A I believe so, yes.**  
25 Q Okay. Because sometime in 2010 was when the

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1 diminished value tools started to be used. Okay.  
2 Let me look quickly at my notes, but I think I  
3 may be done.  
4 Oh, yeah, I do have a couple quick questions. I  
5 have to look over there.  
6 I'm going to give you Exhibit 11.  
7 (Exhibit No. 11 marked for  
8 identification.)  
9 Q (By Mr. Nealey) This was produced. It's Bates No.  
10 MM 1726 to 1736. And this is an analysis done in  
11 2009 by the Property Casualty Insurance Association  
12 of American in October 2009, a diminished value state  
13 by state.  
14 Have you seen or are you aware if there's an  
15 updated version of this?  
16 **A I'm not aware.**  
17 Q Okay. Have you seen a more recent sort of summary of  
18 diminished value or heard of one?  
19 **A I don't believe so, no.**  
20 Q Okay.  
21 (Exhibit No. 12 marked for  
22 identification.)  
23 Q (By Mr. Nealey) I'm going to mark, as Exhibit 12, a  
24 copy of an exemplar letter that's dated American  
25 Family MM 812.

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1 And is it correct to say that a letter that would  
2 contain these eight points or similar to these points  
3 would be sent to any insured that had requested  
4 diminished value in the state of Washington?  
5 **A This is the letter, yeah, that we used. It didn't**  
6 **necessarily always contain eight points.**  
7 Q Okay. Meaning that somebody could -- the letter  
8 changed a little bit over time, right, except it  
9 might have --  
10 **A Depending on the case.**  
11 Q Okay. Is this letter or a letter similar to it still  
12 being used today?  
13 **A To my knowledge, yes.**  
14 Q Okay. And then I only have one copy of this, so I'll  
15 just give you my copy because I couldn't find another  
16 one. This is Exhibit 13. It's American Family B 87.  
17 And this a letter that was sent to Christina Bower in  
18 2011.  
19 (Exhibit No. 13 marked for  
20 identification.)  
21 Q (By Mr. Nealey) Does this, to your knowledge, look  
22 like a standard form letter? Does this text look  
23 familiar to you?  
24 **A (Witness peruses document.) It's not familiar to me**  
25 **as a standard form letter, no. It appears to be**  
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1 **written ad hoc by the -- by the writer.**  
2 Q Okay. And Ms. McNalty writes here, she says, "All  
3 damages to your vehicle were properly repaired, and  
4 there are no indications that repairs occurred."  
5 And my question is related to what Ms. McNalty  
6 writes there, which is that there are no indications  
7 that repairs occurred, is whether you can -- whether  
8 there's an indication on the vehicle that repairs  
9 occurred or not occurred, is that something that  
10 American Family considers in determining whether  
11 diminished value exists on a vehicle?  
12 **A And I'm sorry. To clarify, you were asking if it**  
13 **affected diminished value if they were properly**  
14 **repaired or not?**  
15 Q No, I'm asking about the second thing. Ms. McNalty  
16 writes, quote, "And there are no indications that  
17 repairs occurred."  
18 And my question to you is that in determining  
19 within American Family whether you believe that  
20 diminished value or a loss in market value on a  
21 vehicle exists whether you can determine that repairs  
22 occurred on a vehicle by looking at it, is that one  
23 of the things that you look at?  
24 **A If the repairs to the vehicle from the loss had not**  
25 **been done, you would have to look at it to know that,**  
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1 **I would think.**  
2 Q Once it's been repaired, is whether you can -- and  
3 she says --  
4 **A These statements almost seem contradictory to each**  
5 **other, like it's a typo or something.**  
6 Q Well, she says, "All damages to your vehicle were  
7 properly repaired and there's no indication that  
8 repairs occurred."  
9 So my question is -- she writes "no indication  
10 that repairs occurred."  
11 Does whether you can, by looking at the vehicle,  
12 detect that there are areas of repair, is that part  
13 of your analysis versus repairs that would be  
14 invisible?  
15 **A I wasn't interpreting this --**  
16 Q Okay.  
17 **A -- this way.**  
18 Q Okay.  
19 **A But yes, it sounds like she's evidently looked at the**  
20 **car and said that there was no way to tell that this**  
21 **vehicle had been in a loss and repairs had been**  
22 **completed.**  
23 Q And is that part of what you understand to be the  
24 assessment made at American Family, which is when  
25 you -- when you look at the car, actually look at the  
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1 car, whether you can detect that there are areas of  
2 repair, and the repairs had been done as opposed to  
3 the repair being completely invisible?  
4 **A That could have an impact to diminished value --**  
5 Q Okay.  
6 **A -- yes.**  
7 Q Okay. Because, obviously, if you can't see there are  
8 areas of repair, and the vehicle's been repaired,  
9 then you would expect probably not to have any market  
10 loss, right?  
11 **A Potentially, yeah.**  
12 Q Okay. But if you can detect and tell that there are  
13 areas of repair in the vehicle, or knowledgeable  
14 people can detect, then you would expect there to be  
15 some kind of a market effect?  
16 MR. BENNETT: Object to form.  
17 **A Either an effect to the market value or corrected**  
18 **repairs need to be made to the vehicle, workmanship**  
19 **issues need --**  
20 Q (By Mr. Nealey) Okay.  
21 **A -- to be done.**  
22 Q And in looking at two situations, I mean, just like  
23 to give you a hypothetical, you have a vehicle that  
24 the only thing that's been damaged in the car and  
25 wrecked are what I might call bolt-on/bolt-off parts.  
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1 No paint work's done, no body work's done. You have  
 2 damage to parts like headlights, the windshield, et  
 3 cetera, but everything is just replaced. No paint  
 4 work's needed. Would you expect there to be any  
 5 diminished value on the car?  
 6 **A No.**  
 7 **Q** And when we look at the opposite extreme, which is  
 8 you can tell the paint work has been done because the  
 9 paint -- you get buildup in the repair areas, you had  
 10 Bondo on the car, you have straightening of the  
 11 frame, et cetera, would you expect there to be  
 12 diminished value in the market when you can tell, by  
 13 looking at it, a knowledgeable person, that there are  
 14 areas that have been repaired in the car?  
 15 **A Again, it would depend on the car. What's the age?**  
 16 **What's the mileage? What's the condition of the car?**  
 17 **Potentially, there could be, yes.**  
 18 **Q** And to try to answer that, if we're dealing with a  
 19 car that falls well under the requirements that we  
 20 talked about, and you got a car that's got a lot less  
 21 than 100,000 miles on the car, much less than seven  
 22 years old, and -- and nothing abnormal about the car  
 23 before its loss, and you have a car that, after  
 24 repair, when you look at it, it's got Bondo on it if  
 25 you look real carefully, and it's got paint buildup,

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1 it's got areas of panels that have been blended, and  
 2 you've got framework that's been done on it so that  
 3 somebody who's knowledgeable can tell, it's properly  
 4 repaired, but they can tell, would you expect that  
 5 car to have diminished value?  
 6 **A It could.**  
 7 **Q** Okay. Let me look quickly at my notes and I think  
 8 I'm done.  
 9 (Pause in the proceedings.)  
 10 (Exhibit No. 14 marked for  
 11 identification.)  
 12 **Q** (By Mr. Nealey) Okay. One more document and then  
 13 we're done.  
 14 I'm going to hand you what I'm marking as  
 15 Exhibit 14 which is Document M 766. And this is a  
 16 copy of a certified repair program guarantee that was  
 17 received by Bryce Meyer.  
 18 Is this the same guarantee that American Family  
 19 has given to people at its DRP shops since 2007 in  
 20 the state of Washington?  
 21 **MR. BENNETT:** Object; beyond topic.  
 22 You can answer.  
 23 **A I'm not certain that it is. I know there was some**  
 24 **changes made to some things. Whether this particular**  
 25 **letter was changed or not, I don't know.**

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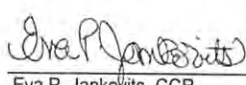

1 **Q** (By Mr. Nealey) Okay. And when I look at this  
 2 guarantee, would you agree with me that it doesn't  
 3 mention restore to pre-loss condition? It says that  
 4 American Family guarantees that the workmanship will  
 5 be of a quality generally accepted in the vehicle  
 6 repair industry.  
 7 **MR. BENNETT:** Object to form.  
 8 **A That is what it says.**  
 9 **Q** (By Mr. Nealey) Okay. And are you aware of American  
 10 Family ever guaranteeing that vehicles of its  
 11 insureds are fully restored to the pre-loss  
 12 condition?  
 13 **A I'm not aware that we ever guarantee that. We're not**  
 14 **the ones fixing them.**  
 15 **Q** Yeah. And the guarantee that's provided as to  
 16 workmanship by American Family goes away when the  
 17 vehicle is resold, right?  
 18 **A Correct.**  
 19 **MR. NEALEY:** I have no further  
 20 questions. Thank you very much.  
 21 **MR. BENNETT:** I do, oddly, have one  
 22 question. I hope to prevent any confusion in the  
 23 future.  
 24 **EXAMINATION**  
 25 **BY MR. BENNETT:**

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1 **Q** Once -- Mr. Nielsen, once American Family contracted  
 2 for the AudaSource tool that we have looked at as the  
 3 explanation as Exhibit 7, and a copy of the tool as  
 4 Exhibit 5, at least as run as to, I believe,  
 5 Mr. Meyer's vehicle, from 2010 through today, does  
 6 American Family rely on anything else other than the  
 7 AudaSource tool in making its diminished value  
 8 assessment?  
 9 **A Yeah. This is just -- this is just one tool of many**  
 10 **that are still currently used to determine the amount**  
 11 **of the diminished value.**  
 12 **Q** Okay. And those other tools would be, I think what  
 13 you explained to Mr. Nealey, for example, Kelley Blue  
 14 Book or NADA?  
 15 **A Correct.**  
 16 **MR. BENNETT:** That's all I have.  
 17 Thank you.  
 18 **FURTHER EXAMINATION**  
 19 **BY MR. NEALEY:**  
 20 **Q** And just to follow up so that the record's clear, so  
 21 you are still using the Kelley Blue Book approach of  
 22 looking at that tool, and it's been used since 2010  
 23 in the state of Washington?  
 24 **A Not necessarily in every case, but it's certainly a**  
 25 **tool that could be utilized, yes.**

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<p>1 Q Is there any other, other than using the conditioning 2 tool and the Kelley Blue Book and then looking at the 3 different values that are produced, is there any 4 other tool other than the AudaSource diminished value 5 tool and that Kelley Blue Book tool that you're aware 6 of being used in the state of Washington to determine 7 the actual amount of loss? 8 <b>A I don't know if it's still currently being used, but 9 we have, on occasion, used the formula that came out 10 of the Georgia case.</b> 11 Q Okay. 12 <b>A It kind of depends on the car and the facts and what 13 seems to be the most appropriate.</b> 14 Q Okay. So you've used the Georgia formula at times. 15 You obviously now use the AudaSource on every case 16 where it's claimed. And you use this Kelley Blue 17 Book different conditioning tool. 18 Any other source that you're aware of used in the 19 state of Washington to determine the amount of 20 diminished value? 21 <b>A Well, again, it's not really a source, but it was one 22 of the exhibits we talked about earlier, that 23 spreadsheet.</b> 24 Q Yeah. And my question wasn't clear. After 2010. 25 <b>A Oh, yeah. And they may still use the spreadsheet.</b></p> <p style="text-align: right;">Page 82</p>	<p>1 STATE OF WASHINGTON ) I, Eva P. Jankovits, CCR, 2 ) a certified court reporter in 3 County of King ) the State of Washington, do hereby 4 certify: 5 6 That the foregoing deposition of WADE A. NIELSEN 7 was taken before me and completed on November 6, 2014, and 8 thereafter was transcribed under my direction; that the 9 deposition is a full, true and complete transcript of the 10 testimony of said witness, including all questions, answers, 11 objections, motions and exceptions; 12 That the witness, before examination, was by me 13 duly sworn to testify the truth, the whole truth, and 14 nothing but the truth, and that the witness reserved the 15 right of signature; 16 17 That I am not a relative, employee, attorney or 18 counsel of any party to this action or relative or employee 19 of any such attorney or counsel and that I am not 20 financially interested in the said action or the outcome 21 thereof; 22 23 That I am herewith securely sealing the said 24 deposition and promptly delivering the same to 25 Attorney Scott P. Nealey. 26 27 IN WITNESS WHEREOF, I have hereunto set my hand 28 and affixed my official seal this 11th day of November, 29 2014. 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100</p> <p style="text-align: center;"> Eva P. Jankovits, CCR Certified Court Reporter No. 1915 (Certification expires 7/3/14.)</p> <p style="text-align: right;"></p>
<p>1 Q Okay. 2 <b>A I don't know.</b> 3 Q Okay. 4 <b>A In some other format.</b> 5 Q Okay. Something like that. 6 Are you aware of American Family hiring in the 7 state of Washington individual adjusters to determine 8 the amount of diminished value on any loss? 9 <b>A Specific to UIM?</b> 10 Q Yeah. 11 <b>A I'm not aware of us doing that on a UIM, no.</b> 12 MR. NEALEY: No further questions. 13 MR. BENNETT: Nothing. 14 (Signature reserved.) 15 (Deposition concluded at 16 2:07 p.m.) 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 83</p>	